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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/525,291	08/08/2005	Karen Ann McCue	102792-414 )11088P3)	7805
27389 7590 06/29/2007 NORRIS, MCLAUGHLIN & MARCUS 875 THIRD AVE 18TH FLOOR NEW YORK, NY 10022			EXAMINER KUMAR, PREETI	
			ART UNIT 1751	PAPER NUMBER
			MAIL DATE 06/29/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/525,291	<b>Applicant(s)</b> MCCUE ET AL.	
	<b>Examiner</b> Preeti Kumar	<b>Art Unit</b> 1751	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 June 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 and 18-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 18-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Non-Final Rejection***

1. Claims 1-15, 18-24 are pending. Claims 1, 21, and 23 are independent.

***Priority***

2. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d). Support for the claimed subject matter, namely a composition excluding the claimed components, is not found in the priority documents. Accordingly the effective priority date for the instant application is the filing date of 8/8/2005.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-15, 18-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically claims 1, 21, and 23 from which all other claims depend, recite contradicting and indefinite limitations as to what is excluded and what components are optional. For example, it is unclear and indefinite how optical brighteners are optional while bleaches are excluded. Similarly, it is unclear what scope patent protection is being sought for in the exclusion of cationic quaternary ammonium components known to be effective against gram positive/negative type

pathogenic, other known art antimicrobial constituents ...it is unclear what is included and excluded by such language.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 1-15, 18-24 are rejected under 35 U.S.C. 103(a) as being anticipated by Crisanti et al. (US 6,221,823).

Crisanti et al. teach a germicidal acidic hard surface cleaning composition which can comprise acids (col. 3, line 5 et seq) including citric, sorbic, acetic, boric, formic, maleic, adipic, lactic and glycolic used singly or in conjunction with one another (col. 3, lines 25-27) such as citric and lactic (see Table I, Exs 5-7 and 17-18) in combination with a solvent including dipropylene glycol n-propyl ether, construed as a "water miscible glycol ether" (col. 4, line 24) or ethanol (col. 4, line 49) in a mixture (col. 3, line 66).

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Crisanti et al. teach the inclusion in the acidic composition, having a preferred pH of 3 (col. 9, line 25), of an anionic surfactant including a sulfonate (col. 5, line 35 et seq) and a nonionic surfactant (col. 6, line 53 et seq).

The prior art, Crisanti et al., are silent as to the claimed composition in terms of a log reduction protocol against one or more of *Staphylococcus aureus* and *Pseudomonas aeruginosa* inter alia as called for by claim 20. However, it is reasonable to presume that said limitations are encompassed by the invention of Crisanti et al. because the presumption is supported by the use of similar materials (i.e. citric acid, an anionic surfactant including a sulfonate, a nonionic surfactant, and glycol ether solvent) and in the similar production steps (i.e. formulated in to a hard surface cleaning composition) to produce the germicidal acidic hard surface cleanser. The burden is upon the applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 594.

Crisanti et al. do not specifically teach the exclusion of the claimed components recited in independent claims 1, 21, and 23. Crisanti et al. does teach that while preservatives may be added in minor amounts, these preservatives do not include a disinfectant component (col. 8, line 45 et seq).

It would have been obvious, to one of ordinary skill in the art, to arrive at a hard surface cleaner excluding the claimed components with a reasonable expectation of success and similar results, because Crisanti et al. provide motivation to one of ordinary skill to exclude antimicrobials as recited by the instant independent claims, because Crisanti et al. teach formulations having antimicrobial efficacy as they were found effective against gram positive *Staphylococcus aureus* and gram negative

*Pseudomonas aeruginosa* (col. 18, line 45 et seq) and Crisanti et al specifically teach the exclusion of known disinfectants in general.

**Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Preeti Kumar whose telephone number is 571-272-1320. The examiner can normally be reached on M-F 9:00am - 5:30pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas Mc Ginty can be reached on 571-272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

PK

  
DOUGLAS MCGINTY  
SUPERVISORY PATENT EXAMINER

Examiner Preeti Kumar   
Art Unit 1751

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